

MERCHANT, GOULD, SMITH, EDELL, WELTER & SCHMIDT

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a-below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: DETECTION OF APNEA AND OBSTRUCTION OF THE AIRWAY IN THE RESPIRATORY SYSTEM

The specification of which

a. is attached hereto

b. was filed on November 4, 1994 as application serial no. 08/335,118 and was amended on (if applicable) (in the case of a PCT-filed application) described and claimed in international no. filed and as amended on (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (see page 3 attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

a. no such applications have been filed.

b. xx such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
Australia	PM2246	05 November 1993	

ALL FOREIGN APPLICATIONS, IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby appoint the following attorney(s), and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Adriano, Sarah B.	Reg. No. 34,470	Gabilan, Mary Susan	Reg. No. P-38,729	Reich, John C.	Reg. No. 37,703
Bacchi, Brian H.	Reg. No. 32,960	Gates, George H.	Reg. No. 33,500	Reiland, Earl D.	Reg. No. 25,767
Beard, John L.	Reg. No. 27,612	Golla, Charles E.	Reg. No. 26,896	Schmidt, Cecil C.	Reg. No. 20,566
Beck, Robert C.	Reg. No. 29,184	Gould, John D.	Reg. No. 18,223	Schuman, Mark D.	Reg. No. 31,197
Bejin, Thomas E.	Reg. No. 37,089	Gressens, John J.	Reg. No. 33,112	Schumann, Michael D.	Reg. No. 30,422
Berman, Charles	Reg. No. 29,249	Hamre, Curtis B.	Reg. No. 29,165	Sebald, Gregory A.	Reg. No. 33,280
Bogucki, Raymond A.	Reg. No. 17,425	Hassing, Thomas A.	Reg. No. 36,159	Smith, Jerome R.	Reg. No. 35,584
Briess, Steven C.	Reg. No. 34,130	Hillson, Randall A.	Reg. No. 31,838	Sorensen, Andrew D.	Reg. No. 33,605
Byrne, Linda M.	Reg. No. 32,404	Hollingsworth, Mark A.	Reg. No. P-38,491	Stinebruner, Scott A.	Reg. No. P-38,323
Carlsen, Alan G.	Reg. No. 25,959	Kastelic, Joseph M.	Reg. No. 37,160	Strawbridge, Douglas A.	Reg. No. 28,376
Carter, Charles G.	Reg. No. 35,093	Kovalchuk, Alan W.	Reg. No. 31,535	Strodthoff, Kristine M.	Reg. No. 34,259
Caspers, Philip P.	Reg. No. 33,227	Kovalchuk, Katherine M.	Reg. No. 36,848	Sumner, John P.	Reg. No. 29,114
Clifford, John A.	Reg. No. 30,247	Krull, Mark A.	Reg. No. 34,205	Summers, John S.	Reg. No. 24,216
Conrad, Timothy R.	Reg. No. 30,154	Lasky, Michael B.	Reg. No. 29,555	Tellekson, David K.	Reg. No. 32,314
Daignault, Ronald A.	Reg. No. 25,968	Lynch, David W.	Reg. No. 36,204	Underhill, Albert L.	Reg. No. 27,403
Daley, Dennis R.	Reg. No. 34,994	Mau, Michael L.	Reg. No. 30,087	Vandenburgh, J. Derek	Reg. No. 32,179
DeFrank, Edmond A.	Reg. No. 37,814	McDonald, Daniel W.	Reg. No. 32,044	Vietzke, Lance L.	Reg. No. 36,708
DiPietro, Mark J.	Reg. No. 29,707	McDonald, Wendy M.	Reg. No. 32,427	Welter, Paul A.	Reg. No. 20,890
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Farber, Michael B.	Reg. No. 32,612	Plunkett, Theodore	Reg. No. 37,209	Wood, Gregory B.	Reg. No. 28,133
				Yip, Philip S.	Reg. No. 37,265

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould, Smith, Edell, Welter & Schmidt to the contrary.

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:
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Telephone No. (612) 298-1055

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name Of Inventor	Family Name	First Given Name	Second Given Name
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203	City	State or Foreign Country	Country of Citizenship
203	Post Office Address	City	State & Zip Code/Country

Signature of Inventor 201	Signature of Inventor 202	Signature of Inventor 203
<i>Michael B. Thorne</i>		
Date	Date	Date
13 December 1994		

For Additional Inventors: __ Indicate here and attach sheet with same information, including date and signature.

1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;
or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.